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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,548	08/05/2003	Susan R. Norris	MONS:059US	1244

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EXAMINER

BUI, PHUONG T

ART UNIT PAPER NUMBER

1638

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,548

Applicant(s)

NORRIS ET AL.

Examiner

Phuong T. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-24 and 30-40 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,13-16,18-23,30-36 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,10-12,17,24 and 37 is/are rejected.
- 7) ☒ Claim(s) 39 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/12/06, 8/21/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Office acknowledges the receipt of Applicant's amendment filed July 11, 2006. Claims 1, 4-24 and 30-40 are pending. Claims 1, 4-7, 10-12, 17, 24, 37 and 39-40 are examined in the instant application. It is noted that claim 17 depends from subsequent claim 37. Claims 8, 9, 13-16, 18-23, 30-36 and 38 are non-elected. All previous rejections not set forth below have been withdrawn. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. This action is made FINAL.

Applicant shall have priority benefit of Provisional Application No. 60/400689 filed August 5, 2002.

Information Disclosure Statement

2. Initialed and dated copies of Applicant's IDS form 1449, filed June 12, 2006 and August 21, 2006 are attached to the instant Office action.

Claim Rejections - 35 USC § 112, 2nd paragraph

3. Claims 1, 4, 5-7, 10-12, 17, 24 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The metes and bounds of "at least about" are unclear because "at least" sets a minimum limit and "about" would encompass values below the minimum limit. Deleting "about" would obviate this rejection. Clarification and/or correction are required.

Claim Rejections - 35 USC § 112, first paragraph

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4. Claims 1, 4, 5-7, 10-12, 17, 24 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the **written description** requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims reciting less than 100% sequence identity lack adequate written description for reasons of record.

Applicant traverses primarily that the sequences disclosed provide a description of the structural characteristics of phyto kinases and the conserved polypeptide sequences associated with phyto kinase activity.

Applicant's traversal has been considered but is deemed unpersuasive because it is unclear what range "at least about" encompasses, and thus may encompass phyto kinases from undisclosed sources having unknown sequences which cannot be predicted based upon Applicant's disclosure. Deleting "about" would obviate this rejection.

5. Claims 1, 4, 5-7, 10-12, 17, 24 and 37 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for SEQ ID NO:1 and a nucleic acid sequence encoding SEQ ID NO:2, does not reasonably provide enablement for nucleic acid sequences having "at least about" 99% sequence identity to these sequences. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. This rejection is maintained for reasons of record.

Applicant traverses primarily that Applicant does not have to provide working examples of every claimed embodiment and only routine experimentation would be required.

Applicant's traversal has been considered but is deemed unpersuasive because it is unclear what range "at least about" encompasses, and thus may encompass numerous unspecified mutations (additions, deletions, substitutions and combinations thereof) requiring undue experimentation. Deleting "about" would obviate this rejection.

Claim Rejections - 35 USC § 102

6. Claims 1, 4, 5-7, 10-12, 24 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexandrov et al. (EP 1033405A2, published September 6, 2000 (Applicant's IDS) and N_Geneseq_8 Database, Accession No. AAC36634, SEQ ID NO:14519, see Result 4 (U)). Alexandrov teaches a sequence obtained from *Arabidopsis thaliana* having 99.2% sequence identity to a sequence encoding Applicant's SEQ ID NO:2, DNA construct (claim 11), canola plant (*Brassica*, p. 329, ln. 50), and seed (p. 329, lns. 56-57) containing said sequence. Even though the prior art does not specifically refer to its sequence as a phyto kinase, it appears to be a phyto kinase because amended claim 1 of the instant application claims a sequence having at least about 99% sequence identity with SEQ ID NO:2 having phyto kinase activity. Accordingly, Alexandrov anticipated the claimed invention.

Remarks

7. Claims 39-40 are objected to as being dependent on a rejected claim but would be allowable if rewritten in independent form.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

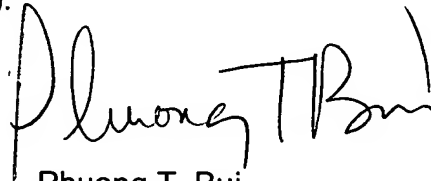
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong T. Bui whose telephone number is 571-272-0793.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Phuong T. Bui', with a stylized flourish at the end.

Phuong T. Bui
Primary Examiner
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09/11/06